

Supreme Court, U. S.

R I L E D

JUN 30 1977

MICHAEL RODAK, JR., CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1976

NO. 76 - 1725

MRS. WANDA MOORE LONG, ET ALs.,

Petitioner

versus

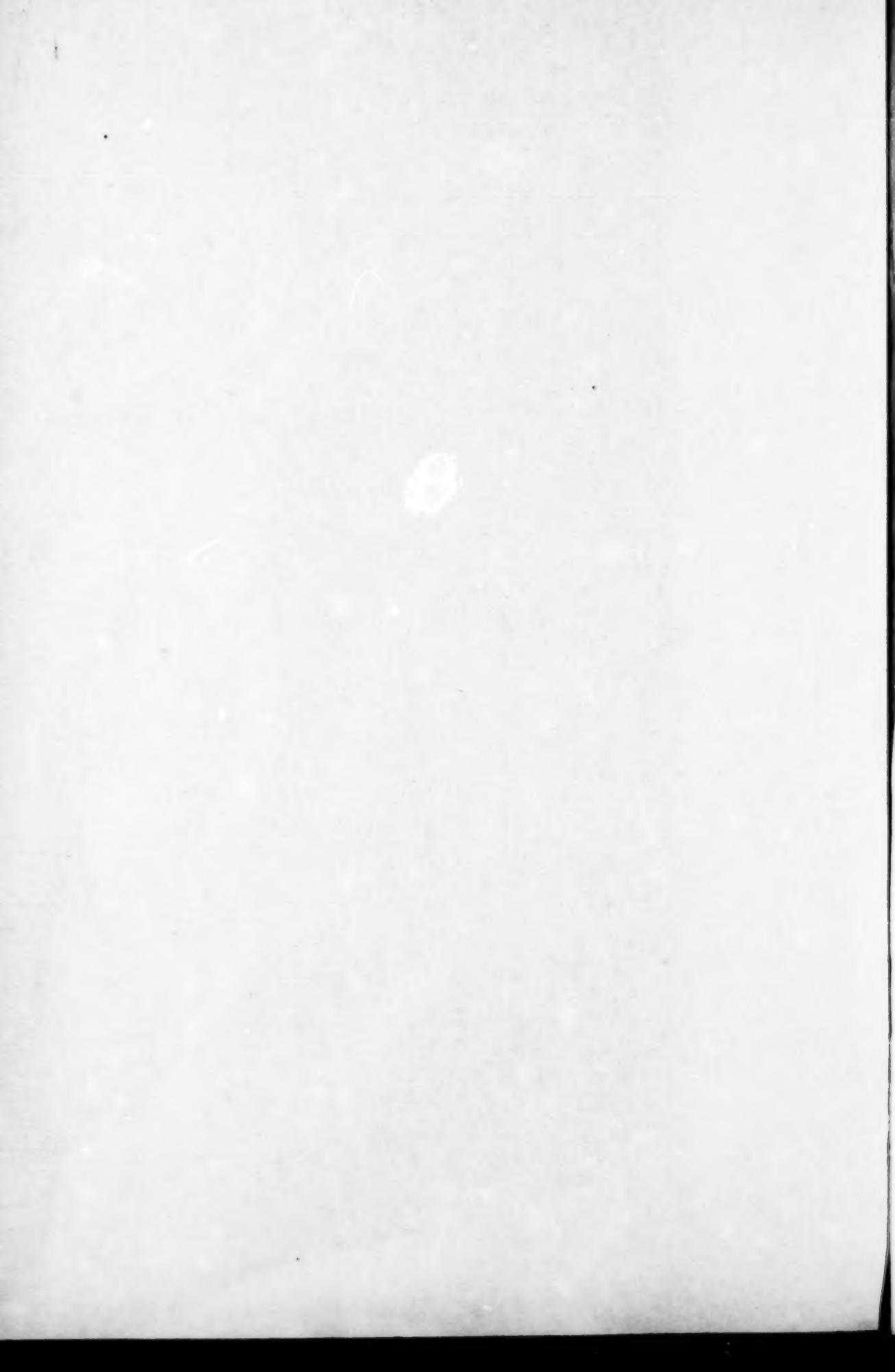
**BELL HELICOPTER COMPANY, A DIVISION
OF BELL AEROSPACE CORPORATION,**

Respondent

**Response to Petition for Writ of Certiorari to the
United States Court of Appeals, Fifth Circuit**

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Division of Bell Aerospace Corporation



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RESPONSE TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEAL,
FIFTH CIRCUIT

This is a response to the plaintiff's petition for Writ of Certiorari to the United States Court of Appeal, Fifth Circuit, from that opinion of the Appellate Court reported at 545 F2d 744 and is filed in opposition to the petition for writs.

QUESTION PRESENTED

Whether the petition filed and any further action thereupon is precluded under *McAllister v. United States*, 348 S. 19, 75 S.Ct. 6 and by reason of the circumstances of the petition being based solely upon factual issues previously decided contrary to petitioner in the Appellate and trial levels as reported at 545 F. 2d. 744 and 357 F.Supp. 1164 under the heading of *Higginbotham v. Mobil Oil Corp.*

STATEMENT OF THE CASE

The Long Family, as survivors of the helicopter pilot involved in this casualty and as petitioners herein, sued Bell Helicopter Company, a Division of Bell Aerospace Corporation, as manufacturer of the helicopter involved in a casualty on August 15, 1967 in the Gulf of Mexico and claims of three families of passengers fatally injured in that casualty were joined with the Long litigation for trial.

After a trial extending over some three weeks' time the District Court dismissed Bell from all proceedings and, as to the families of two of the three passengers, held another defendant, Mobil Oil Corporation, liable. On appeal, the Fifth Circuit Court of Appeals, sustained the District Court on its findings upon the merits of the case, modifying judgment in some respects relating to quantum within the passenger claims.

The statement of facts suggested by the petition of the Long family is only partly correct. The weather in which the pilot Long chose to fly and the manner of his operation of the aircraft was an issue throughout the trial. The suggestion that "the Bell Jet Ranger was a unique and short-lived design" has no basis in fact as that type of aircraft is today being manufactured in quantity for both military and commercial purposes and has gained an enviable reputation for stability and dependability.

OPPOSITION TO THE PETITION FOR WRITS

Other than for a text book recitation of case law at beginning of the brief by petitioner, there is no indication

within the pending petition of a *law* question. Plaintiff's suggestion of what the quoted case law says is itself too pat. The gravamen of this response is, however, that the plaintiff's suggestion within the petition of error in the District and Appellate Courts are old and twice-discarded contentions of unproven fact. It should not be enough, to obtain a hearing in this Court, to just state that the "record clearly shows. . ." (Plaintiff's petition, Page 7) or by characterizing contrary evidence accepted by the Trial and Appellate Courts as "superficial" (Plaintiff's Petition, Page 7) or by suggesting that detailed and precise defense evidence presented over a period of some days of time is somehow "worthless". (Plaintiff's Petition Page 11).

This response does not intend to and hopefully will not be expected to delineate again, as has been exhaustively done within the District and Appellate Court, the contrary view to the plaintiff's suggestion on petition that were not only espoused by the respondent's witnesses but accepted by those two Courts. The District Court had the entire transcript of the trial available to it for detailed study before deciding the case and the care with which the District Judge approached the entire matter is evident in his reported opinion. Nevertheless, we find as well in the Court of Appeals for the Fifth Circuit three learned jurists methodically examining the factual and legal questions relating to the matter, and coming to the same conclusion, as to the respondent here, as the Trial Court. Both of those Courts concluded, in essence, that there was no "evidence to support a conclusion that any factor of design or manufacturing technique caused or contributed to the uncontrolled descent of the helicopter". 357 F. Supp. 1172.

Despite the foregoing, petitioners here at Page 7 et seq. of the petition, as grounds for writs in this Court, wish only again to go over *their* appreciation of the factual issues rather than the clearly delineated conclusions of the Courts below.

It has been held by this Court that the Supreme Court stands, as to review, in the same position as the Court of Appeals. "The question therefore is whether the findings of the District Court are clearly erroneous". *McAllister v. U.S.*, supra. That Court heard competent evidence of engineers and metallurgists using equipment superior to that of adverse witnesses (357 F.Supp. 369) refuting any claims of fatigue type failures that might relate to some manufacturing defect. By the Trial Court's own view, the questionable area in the tail boom examined in the light of all the evidence, suggested a compression type of fracture that would not relate to the find of fracture contended for by the plaintiff (357 F.Supp. 1170). Plaintiff sought to make much of the fact of cracks appearing in the tail booms of other aircraft but it was significant that in all such cases no accident or casualty occurred and discovery thereof upon routine and proper maintenance by the operator was present in each instance. (357 F.Supp. 1171).

Taken as a whole, the petition for writs simply asks this Court to second guess unanimous opinions of the Trial and Appellate Courts upon factual considerations where the record as a whole reveals at most a contrary contention by the plaintiff to the conclusions of those Courts. This does not approach what we must assume is meant by "clearly erroneous". It rather seeks to place the Supreme Court of the United States somewhat in the position that a bartender

might be in having to listen to his customers explain why they are not "understood" elsewhere. We respectfully suggest that should not approximate the function and purpose of this Court.

CONCLUSION

For the reasons set forth Respondent prays that the petition for writs filed be denied.

Respectfully submitted,

A. R. CHRISTOVICH, JR.

CERTIFICATE OF SERVICE

I hereby certify that the Petitioner, Mrs. Wanda Moore Long, has been properly served, in conformity with Rule 33 of the United States Supreme Court, with a copy of the foregoing response to petition for writ of certiorari, by depositing same in a United States post office correctly addressed to petitioner's counsel of record at his post-office address, Jack C. Caldwell, Post Office Box 592, Franklin, Louisiana 70538, with first-class postage prepaid, and that I execute this certificate as a member of the bar of the United States Supreme Court.

New Orleans, Louisiana, this 30th day of June, 1977.

A. R. Christovich, Jr.